UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PREETPAL GREWAL, PLAINTIFF, v. JONATHAN W. CUNEO, ET AL. DEFENDANTS.	:	No. 13 Civ. 6836 (RA)

MEMOROANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

I. Introduction 1

II. No Reasonable Juror Could Conclude That Grewal Is Entitled To Prevail On Any Of Her Claims. 1

A. CGL Did Not Discriminate Against Grewal Based On Her National Origin. 2

1. Grewal Must Present Evidence Sufficient For A Jury To Reasonably Find That CGL Created A Workplace Where National Origin Discrimination Was So Pervasive As To Be Abusive. 2

2. Grewal Cannot Present Evidence Sufficient For A Jury To Reasonably Find That CGL Subjected Her To A Hostile Work Environment. 3

a. Cuneo's Conduct Did Not Create A Hostile Work Environment. 4

(1) Cuneo's Alleged Comments About Grewal Not Being Respected 5

(2) Allegedly Bogus Investigations 9

(3) Other Evidence That CGL Did Not Create A Hostile Environment 11

B. A Jury Could Not Reasonably Find That Grewal Was Entitled To Prevail On Her Breach Of Contract Claim. 11

1. A Jury Could Not Reasonably Find That CGL Breached A Contract. 13

a. Grewal And CGL Did Not Have A Meeting Of The Minds On Contract Terms Which The Firm Allegedly Breached. 15

b. The Alleged Contract Terms Are Too Indefinite To Be Enforceable. 16

c. Grewal Cannot Prove That CGL Caused The Damages Which She Seeks. . 17

d. Grewal Did Not Perform Her Contractual Obligations. 18

(1) Grewal Failed To Submit Time Records As Required By CGL. 19

(2) Grewal Assisted Thomas Without First Obtaining Written Authorization. 20

e. The Unclean Hands Doctrine Bars Grewal From Obtaining Equitable Relief. 21

C. CGL Did Not Breach An Implied Covenant Of Good Faith And Fair Dealing. 22

1. Grewal Must Prove That CGL Acted Arbitrarily And In Bad Faith In Order To Directly Deprive Her Of Her Contract Rights. 22

2. A Jury Could Not Reasonably Find That CGL Breached The Implied Covenant. 22

III. CGL Is Entitled To Summary Judgment On All Of Grewal's Claims. 25

TABLE OF AUTHORITIES

Cases

51 I W. 232nd Owners Corp. v. Jennifer Realty Co., 773 N.E.2d 496 (N.Y. 2002) 22

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) 1

Bermudez v. City of N.Y., 783 F. Supp. 2d 560 (S.D.N.Y. 2011) 2, 3

Cobble Hill Nursing Home, Inc. v. Henry and Warren, Corp., 548 N.E.2d 203 (N.Y. 1989) 12, 17

Figueroa v. N.Y. City Hosp. Corp., 500 F. Supp. 2d 224 (S.D.N.Y. 2007) 8, 11

In re Liu, 664 F.3d 367 (2d Cir. 2011) 9

Lia v. Saporito, 909 F. Supp. 2d 149 (S.D.N.Y. 2012) 10, 12, 18

Mahoney v. Metro. Tr. Auth., Case No. 151518/12,
2014 N.Y. Misc. LEXIS 4690 (Oct. 22, 2014) 3, 4

Matter of Demesyeux, 978 N.Y.S.2d 608 (2013) 12

Morris v. Charter One Bank, F.S.B., 275 F. Supp. 2d 249 (N.D.N.Y. 2003) 1, 2

Murphy v. Am. Home Prods. Corp., 448 N.E.2d 86 (N.Y. 1983) 23

Opals On Ice Lingerie Designs by Bernadette, Inc. v. Bodylines Inc.,
320 F.3d 362 (2d Cir. 2003) 12, 16

Pennecom B.V. v. Merrill Lynch & Co., Inc., 372 F. 3d 488 (2d Cir. 2004) 12

Secured Worldwide LLC v. Kinney, Case No. 15 Civ. 1761,
2015 U.S. Dist. LEXIS 44370 (S.D.N.Y. April 1, 2015) 15

Sheldon v. Stevens, 66 N.Y.S. 796 (1900) 22

Snyder v. Bronfman, 862 N.Y.S.2d 818 (Sup. Ct. 2008),
reversed on other grounds 921 N.E.2d 567 (N.Y. 2009) 12, 17

Thyro.fl v. Nationwide Mut. Ins. Co., 460 F.3d 400 (2d Cir. 2006) 22, 23

Weir v. Holland & Knight, LLP, 943 N.Y.S.2d 795 (2011) 23

Williams v. N.Y.C. City Housing Auth., 872 N.Y.S.2d 27 (N.Y. App. Div. 2009) 2, 3

Wilson v. Southampton Hospital, Case No. 14-cv-5884 (ADS)(GRB),
2014 U.S. Dist. LEXIS 116179 (S.D.N.Y. Aug. 28, 2015) 12, 18

Statutes

Fed. R. Civ. P. 56 1

I. Introduction

On July 7, 2015, the Court dismissed all claims alleged by Plaintiff, Preetpal Grewal ("Grewal"), except her claims for national origin discrimination which allegedly created a hostile work environment[1] and for breach of contract and the obligation of good faith and fair dealing. The Court also dismissed all claims against the individual defendants, leaving only Cuneo, Gilbert & LaDuca, LLP ("CGL") as a defendant. CGL will demonstrate below that no genuine disputes of material fact exist and CGL is entitled to judgment as a matter of law on Grewal's remaining claims.

II. No Reasonable Juror Could Conclude That Grewal Is Entitled To Prevail On Any Of Her Claims.

A party is entitled to summary judgment when no genuine issues of material fact exist and the undisputed facts warrant judgment for the moving party as a matter of law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); Fed. R. Civ. P. 56. After a summary judgment motion has been properly made, the non-moving party must provide specific facts, not merely conclusory allegations or unsubstantiated speculation, demonstrate that there are **genuine** factual issues to be resolved at trial. *See Anderson*, 477 U.S. at 250. In that regard, the non-moving party must show that disputes exist on facts **material** to the claims in that they would affect the outcome of the case. *See Anderson*, 477 U.S. at 248.

Moreover, a plaintiff must present admissible evidence sufficient to support a jury reasonably finding that she is entitled to prevail on her claims. *See Morris v. Charter One Bank, F.S.B.*, 275 F. Supp. 2d 249, 254-255 (N.D.N.Y. 2003). The courts require that showing to protect a defendant from the hardship of going to trial in cases where a jury could not reasonably find for the plaintiff. *See Id.*, at 255.

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[1] The Court dismissed Grewal's claim that Defendants discriminated against her by terminating her employment.

A. CGL Did Not Discriminate Against Grewal Based On Her National Origin.

1. Grewal Must Present Evidence Sufficient For A Jury To Reasonably Find That CGL Created A Workplace Where National Origin Discrimination Was So Pervasive As To Be Abusive.

Count Eight of the Second Amended Complaint ("the SAC") alleges that CGL violated the New York State Human Rights Law ("the State Law") and the New York City Human Rights Law ("the City Law") by subjecting her to a hostile work environment because she is from India and is not a U.S. citizen. (SAC ¶¶ 99-110, 178-181) The courts have held that those statutes are interpreted in accordance with Federal laws which prohibit employment discrimination. *See Bermudez v. City of N.Y.*, 783 F. Supp. 2d 560, 577-578 (S.D.N.Y. 2011).

A plaintiff must prove that her workplace was permeated with discriminatory intimidation and insult sufficiently severe or pervasive, from both a subjective and objective perspective, to create an abusive working environment. *See Bermudez*, 783 F. Supp. 2d at 578. Thus, the employee must show that she subjectively viewed the conduct to be hostile AND that a reasonable person would have perceived it in the same way. *See Id.*, at 583.

The City Law considers the pervasiveness or seriousness of the employer's conduct to determine what, if any, damages an employee may recover. *See Bermudez*, 783 F. Supp. 2d at 579. Neither the State Law nor the City Law imposes a general civility code on the workplace. *See Williams v. N.Y.C. City Housing Auth.*, 872 N.Y.S.2d 27, 41 (N.Y. App. Div. 2009).

As a consequence, even the City Law does not make actionable conduct which a reasonable victim of discrimination would consider "petty slights and trivial inconveniences."

See Bermudez, 783 F. Supp. 2d at 579 and 592 and cases cited therein; *Williams*, 872 N.Y.S.2d at 40-41. A court must consider the totality of the circumstances to assess whether the alleged conduct rose to the level of creating a hostile environment. *See Bermudez*, 783 F. Supp. 2d at 593 and 604; *Mahoney v. Metro. Tr. Auth.*, Case No. 151518/12, 2014 N.Y. Misc. LEXIS 4690, at *14 (Oct. 22, 2014).

2. Grewal Cannot Present Evidence Sufficient For A Jury To Reasonably Find That CGL Subjected Her To A Hostile Work Environment.

CGL, which has its main office in Washington, D.C., represents plaintiffs in nationwide class actions involving sophisticated legal issues. In June 2008, CGL hired Grewal to work as an attorney, assigned to work primarily at the firm's New York City office. (Preetpal Grewal 36-39 and Ex. 1; Jonathan W. Cuneo 6-9 and Ex. 1)[2]

Grewal admitted when deposed that she no longer contends that CGL discriminated against her because she is not a U.S. citizen. (Grewal 158) Thus, CGL is entitled to summary judgment on Grewal's State Law and City Law claims that the firm discriminated against her for that reason.

During her deposition, Grewal testified that she predicates her hostile environment **solely** on her allegation that Jonathan W. Cuneo ("Cuneo") assigned her to perform only document review before 2010 and did not allow her to get involved in cases or to bring her own cases. (Grewal 172-73) As a consequence, CGL is entitled to summary judgment on Grewal's allegations that CGL created a hostile environment because: (1) Cuneo made discriminatory comments in the presence of others and ordered a bogus investigations of her; and (2) CGL tried to frighten her by asking for a copy of her Green Card **after** she had resigned from CGL. (SAC ¶¶ 99-105)

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[2] Citations to deposition transcript pages and exhibits will be "witness name, page no." and "witness name, exhibit no.," respectively. Citations to witnesses' declarations will be "Witness name, Decl. paragraph no."

Moreover, Grewal cannot present evidence which would enable a jury to reasonably find that Cuneo created a hostile work environment by discriminating against her because India was her nation of origin. **Indeed, Grewal admitted when deposed that, throughout her tenure at CGL, she had a "cordial" relationship with Cuneo, enjoyed working with him on cases, and was always treated well by him.** (Grewal 63, 170, 172-173, 211) *See Mahoney*, Case No. 151518/12, 2014 N.Y. Misc. LEXIS 4690, at *18 (summary judgment granted on hostile environment claim because plaintiff said relationship with coworkers was good and she enjoyed working with them).

Grewal also admitted that Cuneo: (1) never said that he would not allow her to work on cases or bring cases because she was from India; and (2) allegedly engaged in that conduct because he did not want her to make money, **not due to her national origin**. (Grewal 160-161, 163, 175-176) Those admissions obviously contradict Grewal's allegation that Cuneo was motivated by discriminatory animus when he did not allow her to work on cases or bring her own cases.

a. Cuneo's Conduct Did Not Create A Hostile Work Environment.

CGL's summary judgment motion will address allegations which Grewal now admits did not contribute to creating a hostile environment, but which she may argue indicates that Cuneo was biased against her.

(1) Cuneo's Alleged Comments About Grewal Not Being Respected

During her deposition, Grewal described **only two, not repeated,** occasions when Cuneo allegedly made comments in others' presence to the effect that she was not respected or taken seriously because she is a "foreigner." (SAC ¶ 101)

The **first** was related to a meeting in June 2011 of attorneys from several firms that were collaborating on a class action involving residential real estate mortgages. Cuneo became angry because attorneys affiliated with firms other than CGL had given short shrift to what he thought were Grewal's incisive comments. Cuneo believed that they had behaved that way because Grewal is a foreigner. (Grewal 53-55; Cuneo 63-65, 67-69)

The following Monday, Cuneo, Grewal and other CGL attorneys participated in a weekly meeting and conference call during which Cuneo angrily said that "we" should be ashamed of ourselves for the disrespectful way in which Grewal had been treated. Cuneo had thought that professionals, such as attorneys, were no longer biased against foreigners. (Grewal 53-55; Cuneo 63-65, 67-69)

Later, Grewal sent an email to Cuneo thanking him for defending her and making what she considered "wonderful" statements about her. When deposed, Grewal admitted that she understood that, when Cuneo had referred to **we**, he was not referring to himself or CGL attorneys and he was **apologizing** for the other attorneys' behavior. (Grewal 54-57 and Ex. 2)

The **second occasion** allegedly occurred when Grewal met with Cuneo and Matthew Wiener ("Wiener"), a CGL attorney, in Cuneo's office, and Cuneo said "we" do not take her seriously because she is a foreigner.[3] (Grewal 68) Once again, Cuneo's statement, even if made, did not suggest that it reflected **his** attitude toward Grewal. (Grewal 58-59)[4]

That evidence shows that Cuneo's comments, even as described by Grewal, were at most sporadic, a statement of what he had observed, and were not intended to embarrass or insult Grewal.[5] **To the contrary, Grewal had thanked Cuneo for his comments during the CGL conference call when he was actually commiserating with her.** (Grewal 54-57 and Ex. 2; Cuneo 65) In addition, Cuneo's isolated statements did not manifest discriminatory animus on **his** part—just the opposite.

When deposed, Grewal said that those statements were the **ONLY** evidence that Cuneo had refused to allow her to bring her own cases and to work on other cases for discriminatory reasons AND she was actively pursuing clients as of June 2011 with his encouragement and support. (Grewal 79-83, 104, 159-160, 79 and Ex. 21) As a consequence, no jury could reasonably find that Cuneo's alleged statements rose to the level of creating a hostile work environment.

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[3] Wiener, whom Grewal considers a friend, has testified that her description of that incident in paragraph 103 of the SAC grossly misrepresents what actually happened. (Grewal 60; Matthew Wiener 39-41, 64) Indeed, Wiener testified that "with respect to the allegation that [Cuneo] said something discriminatory in [Wiener's] presence, **that did not happen**." (Wiener 64)

[4] Paragraph of 100 the SAC alleges that Cuneo said that he could not understand what Grewal was saying due to her Indian accent, even though others could. Grewal has admitted that her accent makes it difficult to understand her, especially when she talks quickly or on the telephone. Grewal also testified that Cuneo would explain that he wanted to be sure to understand what she was saying because he considered it important. (Grewal 52-53, 66-67) CGL asks the Court to take notice that, during pretrial hearings, the Court has also experienced problems understanding Grewal.

[5] Grewal insists that Cuneo made an identical comment to her a few other times when nobody else was present, but Cuneo did not indicate that **he** had no respect for her ability. (Grewal 58)

In addition, those purported comments must be viewed in the context of Cuneo's relationship with Grewal during the four years she worked at CGL. For example, Cuneo knew that Grewal had been born and raised in India when he participated in deciding to hire her, formulating her job offer, and waiving the trial period normally required for newly hired attorneys. (Grewal 32-38, 48, 62-63 and Ex. 1; Cuneo 5, 13, and 177 and Ex. 1)

Moreover, Cuneo repeatedly made complimentary comments about Grewal to her and others and CGL attorneys considered him to be a staunch supporter of her. (Grewal 62-63, 213-214, 277 and Ex. 16; Cuneo 63-65, 67-69; Charles LaDuca 21-23; Wiener 89-90) Cuneo also: (1) expressed concern for her when she was ill; (2) invited her to participate in firm and social events; (3) arranged to meet with her one-on-one for many meals; and (4) urged her to take time off to rest and be with her family. (Grewal 215, 277 and Exs. 10, 11, 15, 16, 17; Cuneo 217) Cuneo would not have agreed to hire Grewal and have engaged in that conduct if he was biased against her.

The evidence also demonstrates that, contrary to Grewal's allegations, Cuneo included her in numerous significant meetings and conference calls and gave her many opportunities for work and credit for it. (SAC ¶ 104) For example, Cuneo arranged for an important meeting of the law firms involved in the Wire Harness Case to be held in New York City in April 2012, specifically because he wanted Grewal to be able to attend. Cuneo also ensured that Grewal participated in other meetings related to that case and made a point of including her in meetings involving a mortgage modification class action. (Grewal 92-96, 99-100, 214-215, 494-495; Pamela Gilbert Decl. ¶ 3 and Ex. 1)

Moreover, Cuneo: (1) granted her request in 2010 to become more involved in litigating cases in a capacity other than document review;[6] (2) ensured that Grewal participated in a visible role in important cases and projects; (3) included her in meetings and conference calls related to those cases; (4) assigned substantial billable work to her which kept her so busy that she could not accept more assignments and had to work nights, weekends, and even when sick;[7] (5) took her side in an internal dispute about which attorney would take the lead in "courting" a potentially major client; (6) insisted that she be **the** point of contact at CGL for specific clients; (8) authorized including her name in a press release about CGL filing a major class action; (9) financially supported Grewal's trips to India to develop an international antitrust practice; (10) approved paying the immigration attorneys who helped her obtain the permit needed to return to the U.S. from India; and (11) invited her to attend a dinner hosted by an influential former Texas legislator while they were working together in Dallas on a case. (Grewal 73-76, 181-182, 228, 231-233, 235, 270, 279-288, 297 and Exs. 4, 5, 6, 12, 15, 18, 19; Cuneo 63, 70-83, 104)

As can readily be seen, Cuneo made decisions and took actions which were favorable to Grewal and which were not indicative of discriminatory animus. *See Figueroa v. N.Y. City Hosp. Corp.*, 500 F. Supp. 2d 224, 236 (S.D.N.Y. 2007) (same decision-maker's actions favorable to employee alleging national origin discrimination show adverse actions not motivated by discriminatory animus). For instance, Cuneo sent an email to Grewal which wished her a happy Diwali, a major Hindu religious holiday, and she wished him happy birthdays and purchased a gift for him when she visited Paris. (Grewal 208-210 and Exs. 10 (pp. 3-4) and 11 (pp. 3, 4, 80))

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[6] CGL had assigned Grewal to review documents because she spent long periods in India during 2008 and 2009 trying to develop an international practice. For that reason, Cuneo assigned document review work to Grewal in order to keep her busy because she was not available to participate on a continuous basis on other aspects of litigation. (Grewal 86-87; Cuneo 38-42)

[7] During 2010 and 2011, Grewal worked a total of **4,346** billable hours for which she could have received lodestar compensation. (Gilbert Decl. ¶ 4) That number certainly is not indicative of an attorney deprived by Cuneo and CGL of opportunities to work and earn a significant compensation in addition to her annual base salary.

Furthermore, Grewal never made any effort to avoid working or being with Cuneo and never appeared uncomfortable in his presence. To the contrary, Grewal stated in October 2011 that she hoped that Cuneo would attend a Brennan Law Center event where she would be present and repeatedly said that she enjoyed and looked forward to spending time with Cuneo. (Grewal 210, 277-279 and Exs. 11 and 17; Decls. of Anne Reiner and Laura Llanos)

(2) Allegedly Bogus Investigations

Grewal's allegation that Cuneo ordered repeated "bogus" investigations of her with the intent to demoralize and harass her also lacks merit. (SAC ¶ 105) The evidence shows that CGL undertook what Grewal characterizes as "investigations" related to expenses incurred when she traveled to India and to legal assistance she provided to Elizabeth Thomas ("Thomas").

When deposed, Grewal admitted that Cuneo and Pamela Gilbert ("Gilbert") and Charles LaDuca ("LaDuca"), the other name partners in CGL, met with her in 2009 to discuss her travel expenses. The CGL partners talked with Grewal about how to pay for future trips to India by using CGL's frequent flyer miles to cover the cost of airline tickets and hotel rooms. In fact, CGL subsequently used the firm's miles to pay for such expenses. (Gilbert Decl. ¶ 5)

CGL, however, did not deny or threaten to deny reimbursement for Grewal's expenses. CGL, a small firm with limited financial resources, merely searched for a better way to account for her travel expenses in order to **support** her efforts to develop clients and cases in India

Hence, CGL's conduct was intended to **help**, not harass, Grewal. (Grewal 196-197, 451-452; Gilbert Decl. ¶ 5)

In May 2012, CGL retained Michael Ross ("Ross"), an attorney with expertise in professional ethics, to conduct an inquiry about Grewal's involvement with Thomas, who had complained to the firm about Grewal and threatened to take legal action against it.[8] CGL retained Ross because the firm had not known that Grewal had been assisting her and CGL was concerned about the ethical implications and potential liability associated with that assistance.[9] (Cuneo 154-159, 165, 186-188, 190, 193, 200, 212; Gilbert Decl. ¶ 6)

Ross interviewed Grewal and other CGL attorneys and reviewed: (1) emails exchanged by Grewal and Thomas starting in July 2011 about a case in the Eastern District of New York in which Thomas was purportedly proceeding *pro se*; (2) a draft complaint which Grewal had marked up; and (3) emails sent by Cuneo to Grewal which stated that CGL was not interested in representing Thomas. (Grewal 143-144, 469-471; Gilbert Decl. ¶ 6 and Ex. 2) After completing that investigation, Ross filed a report with the court **under seal** in order to protect the reputations and interests of Grewal and CGL. (Cuneo 179, 188; Gilbert Decl. ¶ 6 and Ex. 2)

Those facts demonstrate that **Cuneo** did not undertake either "investigation" as a means of harassing Grewal due to her national origin. In fact, the decisions to conduct those investigations was made **collectively** by Cuneo and by Gilbert and LaDuca—whom Grewal has admitted never manifested any discriminatory animus toward her. (Grewal 56, 109, 120 and

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8 Grewal's allegation that CGL retained a private investigator for that purpose is mistaken. (SAC ¶¶ 105 and 111; Cuneo 186-187; Grewal 133)

9 CGL was concerned, *inter alia*, that Grewal's had violated the Code of Professional Responsibility by "ghostwriting" pleadings for Thomas. (Cuneo 157-159, 179, 186-188; Gilbert Decl. ¶ 6) The courts and legal ethicists differ as to whether such activity is ethical. *See In re Liu*, 664 F.3d 367, 369-372 (2d Cir. 2011).

Exs. 2 and 11(pp. 9, 14-16); Cuneo 104; Gilbert Decl. ¶ 6) Furthermore, CGL had legitimate, non-discriminatory business reasons for conducting each investigation.[10] *See Figueroa,* 500 F. Supp. 2d at 236-237.

(3) Other Evidence That CGL Did Not Create A Hostile Environment

Cuneo has never engaged in conduct which suggests that he is biased against individuals whose nation of origin is India. In that regard, Cuneo has enjoyed excellent relationships with employees, such as Nadia Belkin, whom he knew was born in India, and Ava Mehta, whose parents had emigrated from India to the U.S. (Decls. of Nadia Belkin and Ava Mehta) As a consequence, there is no reason to believe that he felt animus toward Grewal due to her national origin.

Significantly, Grewal, who practiced employment law before working at CGL, never complained about Cuneo or CGL to any government agency that enforces employment discrimination laws. (Grewal 18-19, 157) In addition, Grewal made no effort to obtain employment elsewhere before resigning from CGL in May 2012—an option if she had found the work environment hostile. For example, Grewal did not ask two New York law firms which she had left on excellent terms before working for CGL whether she could return to them. (Grewal 18-22, 148-151, 156)

B. A Jury Could Not Reasonably Find That Grewal Was Entitled To Prevail On Her Breach Of Contract Claim.

A plaintiff pursuing a breach of contract claim must prove: (1) an agreement exists; (2) the plaintiff substantially performed her obligations; (3) a breach by the defendant; and (4) the amount of damages with a reasonably degree of certainty which were proximately caused by that breach. *See Wilson v. Southampton Hospital*, Case No. 14-cv-5884 (ADS) (GRB), 2014 U.S. Dist. LEXIS 116179, at *45 (S.D.N.Y. Aug. 28, 2015); *Lia v. Saporito*, 909 F. Supp. 2d 149, 169 (S.D.N.Y. 2012). Enforceable contract terms do not exist unless the parties had a complete meeting of the minds. *See Opals On Ice Lingerie Designs by Bernadette, Inc. v. Bodylines Inc.*, 320 F.3d 362, 370 (2d Cir. 2003).

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[10] Grewal testified when deposed that she does not contend that CGL created a hostile environment by asking for a copy of her Green Card. Indeed, that request obviously did not affect the work environment because it was **after** Grewal was no longer employed. (Gilbert Decl. ¶7)

In *Cobble Hill Nursing Home, Inc. v. Henry and Warren, Corp.*, 548 N.E.2d 203, 206 (N.Y. 1989), the court stated:

> Few principles are better settled in the law of contracts than the requirement of definiteness. If an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract. [cites omitted] The doctrine of definiteness serves two related purposes.
>
> *First,* unless a court can determine what the agreement is, it cannot know whether the contract has been breached and it cannot fashion a proper remedy. [cites omitted] This is particularly significant where specific performance is sought. *Second,* the requirement of definiteness assures that courts will not impose contractual obligations when the parties did not intend to conclude a binding agreement. [cite omitted]

Contract terms may be neither vague nor indefinite because the parties' agreement must be certain and explicit and their full intention able to be ascertained to a reasonable degree of certainty. *See Snyder v. Bronfman*, 862 N.Y.S.2d 818 (Sup. Ct. 2008), reversed on other grounds 921 N.E.2d 567 (N.Y. 2009). In addition, a party with Unclean Hands cannot obtain an equitable remedy, such as specific performance or an accounting for compensation allegedly owed pursuant to the contract. *See Pennecom B.V. v. Merrill Lynch & Co., Inc.*, 372 F. 3d 488, 493 (2d Cir. 2004); *Matter of Demesyeux*, 978 N.Y.S.2d 608, 614 (2013).

1. A Jury Could Not Reasonably Find That CGL Breached A Contract.

Grewal's failure to file another amended complaint by February 1, 2016, as ordered by the Court when denying her motion to reconsider the dismissal of 10 of her claims, makes it difficult to identify the contract terms allegedly breached by CGL. For instance, the first page of the SAC alleges that Grewal "became a partner" in CGL and that the firm expropriated "the substantial value of her **interest** in the firm." Grewal also alleges that she: (1) was a partner; (2) participated in partnership meetings; (3) was never paid her partnership draw; (4) was not compensated for the value of her partnership share; (5) was denied the fiduciary obligations owed to her as a partner by other CGL partners; and (6) was improperly squeezed her out of her position as a partner at CGL. (SAC ¶¶ 19-31, 33, 138 (a) and (g), 153, and 156) Those allegations and Grewal's statements in court show that she initially and emphatically contended that she was an **equity** partner. (**See transcripts of pretrial conferences on 12/12/13 (pp. 2 and 5), 9/11/15 (pp. 4-6), 1/4/16 (p. 4), 2/10/16 (pp. 4-6)**)

When deposed, however, Grewal testified that she was merely a "partner in the cases which she originated"—**not** an equity partner—pursuant to the terms of a formal contract which she purportedly signed on **June 30, 2008**. Grewal has never been able to produce a copy of that contract and CGL has not found one after thoroughly searching for such a document, which nobody at the firm recalls ever seeing. (Grewal 46, 77, 83, 86-88, 102; Gilbert Dec. ¶ 8)

Moreover, the Complaint, First Amended Complaint, and Second Amended Complaint drafted by Grewal, a litigator with experience drafting complex complaints, do **not** mention a contract which refers to her as an equity partner or partner as to cases originated by her. Indeed, Grewal mentions only a series of emails exchanged by Cuneo and her during June 2008 which show that she accepted a job as an at-will employee—not a partner of any kind. (SAC ¶¶ 27-32)

As the litigation progressed, Grewal shifted her position concerning the nature of her legal relationship with CGL obviously because she realized that her claim to have been an equity partner was wholly untenable. For example, documents obtained during discovery, including an email, a resume, and an application for admission *pro hac vice* written by Grewal after **June 30, 2008—the date she supposedly signed the contract**—refer to her as an "associate" or a "counsel" at CGL. (Grewal 83, 85, 92-101 and Exs. 7 and 8)

When asked at her deposition to explain those documents, Grewal testified that: (1) she had forgotten about that contract when she wrote an email on **July 8, 2008** which said that she was an associate at CGL; and (2) she had simply failed to correct the resume which she used in **2011** and which also said she was an associate. (Grewal 92-101 and Exs. 7 and 8) In addition, a series of emails sent and received by Grewal in June 2008 show that she was offered and accepted a position at CGL as an "at-will employee." (Grewal 36-39 and Ex. 1; Cuneo 6-9)

Grewal could have clarified this confusing situation if she had complied with the Court's order that denied her motion to reconsider the dismissal of 10 of her claims and required her to file another amended complaint by February 1, 2015. That complaint was supposed to reflect the effect of that dismissal on this litigation, including the elimination of Grewal's claims predicated on her allegations that she had been a CGL partner.

In moving for summary judgment, CGL will address Grewal's breach of contract claim in the following manner:

1. Grewal and CGL did not reach a meeting of the minds on contract terms material to her claim.

2. The contract terms, even as described by Grewal, are too vague and indefinite to be enforceable.

3. Grewal did not perform her contract obligations.

4. The Unclean Hands Doctrine precludes Grewal from obtaining equitable relief.

a. Grewal And CGL Did Not Have A Meeting Of The Minds On Contract Terms Which The Firm Allegedly Breached.

Grewal alleges that CGL breached her contract with the firm by: (1) refusing to allow her to litigate cases which she brought to the firm; (2) failing to give her credit for such cases; (3) subverting her ability to continue and develop an international practice; (4) terminating her affiliation with CGL without good cause; (5) refusing to compensate her for the value of her investment in cases; and (6) failing to compensate her for the value of her partnership share. (SAC ¶¶ 141-143)

As stated above, however, the only contract identified in the SAC are the emails which she exchanged with Cuneo in June 2008 and which set forth the terms of the employment with CGL she accepted. (SAC ¶¶ 25-31) Those emails did not include the criterion to be used to determine the amount of credit Grewal would receive for cases brought to the CGL. Also missing were terms which obligated CGL to: (1) allow her to continue and develop an international practice; (2) assign her to cases which she brought to the firm; (3) terminate her affiliation with the firm only for just cause; (4) compensate her for her investment in cases; and (5) make her a partner who had a "share" in the firm. (Grewal 36-38 and Ex. 1)

Moreover, none of the evidence obtained during discovery shows that Grewal and CGL had agreed to such terms and, in fact, she now admits that she was never an equity partner who owned a share in the firm. (Grewal 77-82, 87-88, 91, 102) Hence, a jury could not reasonably find that Grewal had proven that CGL and she had the requisite meeting of minds on those terms. *See Secured Worldwide LLC v. Kinney*, Case No. 15 Civ. 1761, 2015 U.S. Dist. LEXIS 44370, at *48-49 (S.D.N.Y. April 1, 2015) (plaintiff not entitled to increased pay from employer because no meeting of minds on what amount, if any, would be paid).

The same can be said about Grewal's demands in this litigation that she is entitled to compensation in addition to her annual salary for:

1. Suggesting ideas which may have been used by CGL in cases that she had not brought to the firm. (Grewal 106-108 and Exs. 24 and 26; Cuneo 45, 56 and Ex. 27; Gilbert Dec. ¶ 9)
2. Not just for bringing to CGL a case regarding a car part known as a Wire Harness, but also for allegedly bringing to the firm 34 cases filed **after** Grewal left CGL in May 2012 which involved different price fixing conspiracies related only to different automobile parts. (Cuneo 47-49; Robert Cynkar 22-23; Joel Davidow 28-36)

The evidence shows that a jury could not reasonably find that CGL and Grewal had a meeting of the minds on any such contract terms because CGL never agreed to those unilateral demands. (Grewal 390-391, 399-400, 405 and Exs. 26 and 27; Cuneo 45, 56 and Ex. 27) *See Opals On Ice Lingerie Designs by Bernadette, Inc.*, 320 F.3d at 372 (defendant not obligated to submit dispute to arbitration because plaintiff failed to prove defendant had agreed to use procedure).

b. The Alleged Contract Terms Are Too Indefinite To Be Enforceable.

Grewal cannot provide evidence that a jury could use to calculate the amount of compensation allegedly owed by CGL for bringing cases to the firm or for the values of her partnership share and her investment in cases because no contract term provided for such payments. Indeed, the email exchange which stated the terms of Grewal's employment said only that compensation for bringing and hours worked on a case would be based on the "**relative** value of her contribution to a case." (Grewal 36-39 and Ex. 1) Neither those emails nor any other evidence specifies the method or criterion to be used to determine that value.

The same is true concerning the value of her partnership share and investment in cases. As a consequence, any contract terms related to those subjects are too vague, indefinite, and subjective for judicial enforcement because a jury would be left to speculate on the amount of damages that Grewal is entitled to recover. *See Cobble Hill Nursing Home, Inc.*, 548 N.E.2d at 206-207 (lack of objective criterion to calculate amount to be paid made contract too indefinite to be enforceable); *Snyder,* 862 N.Y.S.2d at 818 (contract unenforceable because term requiring plaintiff to be paid "fair share" of defendant's profits was too indefinite).

c. Grewal Cannot Prove That CGL Caused The Damages Which She Seeks.

Grewal alleges that she is entitled to recover damages in connection with specific cases which she purportedly brought to the CGL or on which she worked, including: (1) mortgage foreclosure and modification class actions against Bank of America ("BOA"), JPMorgan Chase ("JPM"), Citigroup ("Citi"), and Wells Fargo ("WF"); (2) a product defect claim against Shaw Flooring ("Shaw"); and (3) a consumer fraud case against Capital One. (SAC ¶¶ 74-77, 81-98) Those cases, however, did not generate any fee awards or yielded awards too small to pay compensation to any of attorneys who that litigation.

That evidence shows as follows:

1. CGL did not receive a fee award in the BOA case because the lead plaintiff settled on an individual basis and the court granted summary judgment on the class claim.

2. CGL has not recovered a fee award in the Citi case because the court denied class certification.

3. The fee award received in the JPM case was largely exhausted by the substantial litigation expenses incurred by CGL.

4. CGL did not recover a fee award for the WF case because the firm lost that class action, which subsequently settled on an individual basis that did not entitle the firm to an award.

5. CGL never filed a case against Shaw and the firm told Grewal after she resigned from her employment that she could undertake such litigation if she chose to do so.

6. CGL served only as local counsel in a Capital One case filed in Virginia and did not receive a fee award which would entitle Grewal to lodestar compensation.

(Cuneo 56-6, 118, 166) Thus, a jury could not reasonably find that Grewal is entitled to recover damages.

d. Grewal Did Not Perform Her Contractual Obligations.

A jury could not reasonably find that Grewal had proven an essential element of her breach of contract claim against CGL, namely, she had performed her contractual obligations. *See Wilson,* Case No. 14-cv-5884 (ADS) (GRB), 2014 U.S. Dist. LEXIS 116179, at *45; *Lia,* 909 F. Supp. 2d at 169. Indeed, the evidence demonstrates that Grewal committed substantial and material breaches of the express and implied terms of her contract by, *inter alia,* failing to submit timesheets as required by CGL and representing Thomas without first obtaining written authorization from Cuneo or LaDuca.[11]

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[11] When deposed, Grewal insisted that her contract included no implied terms, such as submitting timesheets, but she admitted that she had received vacation time and other benefits which were not expressly stated in that agreement. (Grewal 390-392) On the other hand, Grewal claims that a covenant

(1) Grewal Failed To Submit Time Records As Required By CGL.

CGL derives revenue primarily from attorneys' fee awards based on the firm's ability to provide courts with reliable records of the hours worked by the attorneys on specific cases. The reliability of those records is enhanced and better insulated from attack by opposing counsel only if attorneys submit their hours contemporaneous with their performance of the work. For that reason, CGL required attorneys to submit their timesheets for each month by the first of the next month. (Gilbert Decl. ¶ 10; Grewal 291and Exs. 20 (p. 6) and 22)

The evidence demonstrates that Grewal did not submit **any** time records for 2011 until late November and early December of that year and only after CGL repeatedly demanded that she provide them. Indeed, Grewal started providing those records in dribs and drabs at exactly the same time that she was demanding that CGL pay her more compensation for purportedly contributing ideas for use in existing cases. (Grewal 368, 400 and Exs. 23, 24, 26 and 27)

That "coincidence" prompted LaDuca to characterize Grewal's behavior as a "game" that she was playing in order to gain leverage in connection with that demand—a demand which the firm refused. In that regard, Grewal had continued to withhold her time records despite repeatedly assuring LaDuca and Cuneo that she needed only to "push a button" to generate those documents. (Grewal 368 and Ex. 26)

The evidence also shows that Grewal did not submit **any** time records for 2012 before she resigned from CGL in May of that year, even after being expressly asked to do so while still employed OR in response to the firm's subsequent demands. Indeed, Grewal did not provide any time records for 2012 until she responded in **November 2015** to a production request served

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of good faith and fair dealing was an **implied term** of her contract. (SAC ¶ 147) Grewal obviously takes whatever position on the existence of implied contract terms is convenient to her.

during this litigation and until after CGL had filed a Counterclaim alleging that she breached her contract by failing to provide those records. (See Exhibit 1 to this memorandum) Grewal will have deprived CGL of an essential benefit of its bargain with her if her failure to comply with the timesheet requirement adversely affects fee awards that would be used to cover expenses, including attorney pay, and to generate a profit. (Grewal 386-387 and Ex. 25; Gilbert Decl. ¶ 11)

(2) Grewal Assisted Thomas Without First Obtaining Written Authorization.

CGL requires **all** attorneys to obtain authorization from Cuneo or LaDuca before agreeing to represent clients because the partners want to know about their workloads and to avoid malpractice and professional ethics problems. In addition, the emails exchanged in June 2008 which established terms of Grewal's employment stated that she must work **with** CGL on cases and Cuneo had admonished her in 2011 that her contract prohibited working on cases outside the firm. (Grewal 36-38 and Exs. 1, 20 (p. 2), and 21; Gilbert Decl. ¶ 12)

During the summer of 2011, however, Grewal began providing legal assistance to Thomas, which included: (1) reviewing papers to be filed in the case filed by Thomas in the Eastern District of New York; (2) communicating with other attorneys who were assisting Thomas; (3) meeting with Thomas at CGL's office and allowing her to stay at Grewal's apartment in New York City; (4) advising her on how to obtain an extension of a due date for a pleading; **AND** (5) agreeing to appear on her behalf at a court hearing. (Grewal 237, 347 and Exs. 14 and 21; Gilbert Decl. ¶ 3 and Ex. 1; Decl. of Elizabeth Thomas)

Grewal engaged in that activity without obtaining authorization from Cuneo or LaDuca. To the contrary, Cuneo had told Grewal more than once that CGL was not interested in representing Thomas. (Grewal 355-356, 366-367 and Exs. 29; Cuneo 92-93)

Cuneo had also asked Grewal what she was doing after she: (1) referred to helping an unnamed ***pro bono*** client who had a case pending in the Eastern District; (2) said that she could not attend a litigation strategy meeting because she had **committed months ago** to attend a hearing in that case; and (3) could not accept assignments because **she** had "many clients" who insisted that she help them file class actions—clients whom Cuneo correctly pointed out would be **CGL's** clients, not hers. (Grewal 364 and Exs. 14 and 21 (Bates 11493))

Grewal, however, did not identify Thomas as the *pro bono* client—a characterization inconsistent with her statement to Thomas that she would seek compensation if she entered a notice of appearance in the Dolan Media case. In addition, Grewal never recorded on timesheets hours spent assisting Thomas, an omission that concealed her involvement with Thomas. (Grewal 347 and Exs. 14 and 21; Gilbert Decl. ¶ 3 and Ex. 1(15121)

On May 4, 2012, Thomas called LaDuca and told him that Grewal had been secretly representing her for a year and that CGL should investigate that situation. During that call, CGL learned for the first time about the nature and extent of Grewal's surreptitious involvement with Thomas, who had filed an Emergency Order To Show Cause why CGL should not be sanctioned for Grewal's conduct. Thus, Grewal had exposed CGL to liability to Thomas, ethics charges, and embarrassment before the presiding judge in Thomas' case. Moreover, CGL spent approximately $70,000 for attorneys' fees to resolve that situation. (Gilbert Decl. ¶ 6; Cuneo 157-158, 165)

e. The Unclean Hands Doctrine Bars Grewal From Obtaining Equitable Relief.

The SAC seeks an accounting and specific performance of CGL's alleged contractual obligation to pay her for cases which she brought to the firm, ideas contributed in other cases, and the values of her partnership share and investment in cases. (SAC ¶ 239) Grewal, however, comes to this Court with Unclean Hands because, as shown above, she breached terms of her contract and misled CGL about her involvement with Thomas. That conduct bars Grewal from obtaining the equitable relief which she seeks. *See Sheldon v. Stevens*, 66 N.Y.S. 796 (1900) (accounting is an equitable remedy).

C. CGL Did Not Breach An Implied Covenant Of Good Faith And Fair Dealing.

1. Grewal Must Prove That CGL Acted Arbitrarily And In Bad Faith In Order To Directly Deprive Her Of Her Contract Rights.

All contracts imply a covenant of good faith and fair dealing which requires that neither party do anything to negate the other party's contract rights. *See 51 I W. 232nd Owners Corp. v. Jennifer Realty Co.*, 773 N.E.2d 496, 500 (N.Y. 2002). That covenant ensures only that a party does not act arbitrarily or irrationally by directly violating a duty presumably intended by the parties. *See Thyro.fl v. Nationwide Mut. Ins. Co.*, 460 F.3d 400, 407-08 (2d Cir. 2006). Moreover, the covenant does not undermine a party's right to act to protect its interests in a way that may incidentally impair the other party's anticipated benefit from the contract. *Id. at* 460

2. A Jury Could Not Reasonably Find That CGL Breached The Implied Covenant.

The evidence presented in support of CGL's summary judgment motion shows that a jury could not reasonably find that the firm and Grewal were parties to a contract that plainly required CGL to pay her a specific percentage of attorneys' fees generated by cases originated by her. Indeed, as shown above, no contract existed with enforceable terms related to that subject—an essential prerequisite to the existence of the implied covenant—because:

1. The contract terms upon which Grewal relies do not include definite and objective criteria needed to ascertain under what circumstances CGL was obligated to pay her a percentage of fee awards and exactly how much must be paid.

2. Grewal did not originate or work on cases which resulted in fee awards, a percentage of which CGL has failed to pay.

3. Grewal failed to perform contractual her obligations which she may not circumvent by invoking the implied covenant. *See Weir v. Holland & Knight, LLP*, 943 N.Y.S.2d 795 (2011) (implied covenant does not create new contract rights and cannot be used to create obligations inconsistent with contract terms); *Murphy v. Am. Home Prods. Corp.*, 448 N.E.2d 86, 91 (N.Y. 1983) (implied covenant may not modify employee's at-will status under express contract terms).

4. The contract terms did not obligate CGL to allow Grewal to work on cases originated by her and to continue developing an international antitrust practice.

(Grewal 102 and Ex. 1; Cuneo 56-6, 118, 166)

Moreover, the evidence does not support Grewal's allegations that: (1) CGL breached the implied covenant by discontinuing support for developing that practice; and (2) CGL attorneys acted in less than good faith by taking credit for clients and cases that she brought to firm and by interfering with her ability to work on key cases. (SAC ¶¶ 44-98)

For example, Grewal admitted when deposed that CGL decided to cease working with Michael Hausfeld's law firm on antitrust claims pertaining to India **because** Cuneo decided that the arrangement was not sufficiently profitable. (Grewal 146-147) *See Thyro.fl,* 460 F.3d at 408 (party does not breach implied covenant by acting in own self-interest, even if incidentally affects other party adversely). CGL also decided in 2009 to discontinue Grewal's effort to develop that practice because she told the firm that she wanted to stop going to India due to her security and health concerns. (Grewal 145-151; Cuneo 21-24, 34, 38; LaDuca 7, 13-14)

Thus, GCL made those decisions for good business reasons, not in bad faith to deprive Grewal of the ability to earn compensation. (SAC ¶¶ 45-56) In addition, during the years Grewal was traveling to India, CGL assigned her to review documents in cases expected to produce fee awards and lodestar compensation for her—hardly an action calculated to deprive her of income. (Gilbert Decl. ¶ 13)

Grewal also alleges that CGL interfered with her ability to procure Bosch as a client (SAC ¶¶ 62-66), but the evidence shows that senior managers at that company decided against retaining CGL. In addition, Cuneo had ensured that Grewal remained the lead attorney responsible for that effort and merely wanted Joel Davidow, a CGL attorney with expertise in international antitrust matters, to be mentioned as a firm resource in a letter sent by Grewal to Bosch. (Grewal 270-271; Cuneo 70-84; Joel Davidow 20-23, 37-41; Cynkar 21-22)

Moreover, as pointed out at pages 7 and 8 above, the evidence shows that CGL: (1) assigned Grewal to prominent positions in class actions; (2) included her in numerous meetings, conference calls, and projects related to those cases; (3) gave her enough assignments on such cases to keep her so busy that she could not accept more work and to accrue **4,300** billable hours during 2010 and 2011, which entitled her to lodestar compensation if CGL obtained fee awards.

For example, in 2012, CGL chose Grewal to represent it in MDL proceedings in the nationwide class action against Citi—an assignment which she enjoyed and kept her extremely busy. (Grewal 151, 228, 232-233, 332-334, 494-495; Cuneo 141, 150) That conduct is not indicative of a bad faith attempt to interfere with Grewal obtaining the benefit of her bargain with CGL.

III. CGL Is Entitled To Summary Judgment On All Of Grewal's Claims.

CGL has demonstrated that Grewal's claims are not supported by facts which are genuinely in dispute and are actually material because they would affect the outcome of this litigation. Indeed, the evidence and Grewal's behavior during this litigation shows that she has angrily and blindly lashed out at CGL and Cuneo in particular for imagined slights, especially the rejection of her demands for more pay and the inquiry about her unauthorized representation of Thomas.

Grewal has falsely accused Cuneo of creating a hostile environment by discriminating against her because she is from India. Grewal does so despite the fact that **she** has characterized their relationship as cordial and the evidence shows that she enjoyed working and spending time with him. Grewal has also taken positions regarding her contract and implied covenant claims, such as her allegation that she was an equity partner, which are directly contradicted by indisputable evidence, including emails, a resume, and a *pro hac* application written by her.

As is readily apparent, a jury could not reasonably find that, under the applicable substantive law, including her burden of proof, the evidence entitles Grewal to prevail on any of her claims. Thus, CGL is entitled to summary judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that, on July 22, 2016, a copy of the foregoing was served on Preetpal Grewal, by email and first class mail, postage prepaid addressed to her at 395 South End Avenue, Apt. 8P, New York, NY 10280.